

NTSB Order No. EA-4539

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 26th day of March, 1997

Respondent .

## OPINION AND ORDER

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

Airline Transport Pilot certificate (No. 2293906) on allegations that he had violated sections 91.7(a), 91.13(a), 121.563, and 121.628 of the Federal Aviation Regulations ("FAR").<sup>2</sup> The appeal will be denied.<sup>3</sup>

The amended order of suspension, which served as the complaint, alleged, insofar as is relevant here, the following facts and circumstances concerning the respondent:

2. On or about March 31, 1995, you operated civil aircraft N925BV, a Douglas DC-8, pursuant to Part 121 as

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<sup>2</sup>FAR sections 91.7(a), 91.13(a), and 121.563 provide as follows:

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate an aircraft unless it is in an airworthy condition.

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 121.563 Reporting mechanical irregularities.**

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. Before each flight the pilot in command shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

FAR section 121.628, entitled "**Inoperable instruments and equipment,**" was allegedly violated because the operation of an aircraft unairworthy for the reasons specified in the complaint, namely, a maintenance item whose repair could not be deferred under a minimum equipment list, was contrary to conditions and limitations in respondent's company's operations specifications.

<sup>3</sup>The Administrator has filed a reply brief opposing the appeal.

Pilot in Command (PIC) of Buffalo Airways, ALG, Inc., flight CWC-174, departing Guarulhos International Airport (SBGR), Sao Paulo, Brazil, to Simon Bolivar International Airport (SVMJ), Maiquetia, Venezuela, and thence to Miami International Airport, Miami, Florida.

3. During a preflight inspection of N925BV prior to N925BV departing Venezuela, a representative of the Federal Aviation Administration (FAA) and or [sic] a representative of the Venezuelan Civil Aviation Authority (CAA), informed you they had found a maintenance discrepancy, a hydraulic leak in or about the area of the left hand wing aileron area.

4. Said discrepancy was required to be entered in N925BV's aircraft maintenance log, and required repair prior to flight. Further, said maintenance discrepancy was not deferrable.

5. Prior to departing Venezuela, you did not ensure said discrepancy was entered in N925BV's aircraft maintenance log, nor did you ensure said discrepancy was corrected prior to said departure.

6. Thereafter, N925BV departed Venezuela for Miami.

7. By reason of the above noted leak, N925BV was not airworthy at the time of the above noted flights.

8. Your actions as described above were contrary to Buffalo's general operating manual procedures.

As noted above, the law judge upheld the charges associated with these allegations.

Respondent maintains here, as he did at the hearing, that the inspectors mistook condensation for a hydraulic leak.<sup>4</sup> In this connection, he renews his claim that the aircraft could not, among other things, have been taxied or steered if it had a hydraulic leak. The law judge, notwithstanding the respondent's

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<sup>4</sup>Respondent testified in his own defense but called no other witnesses. In this regard, we note that the FAA inspector testified that, before directing respondent's attention to the matter, he had shown the area in question to the flight engineer, who agreed there was fluid leak. Tr. at 38.

position, credited the inspectors' testimony as to their knowledge of the difference between water and hydraulic fluid and as to their observation of the latter, whose nature they confirmed by touch, dripping from the wing of the Buffalo Airways aircraft and forming puddles below. That determination effectively rejected respondent's insistence, with respect to which no supporting evidence was offered, that a DC-8 could not be operated normally if a hydraulic leak actually existed.

Although respondent's brief establishes his disagreement with the law judge's resolution of the parties' witnesses' differing accounts about, *inter alia*, the condition of the aircraft before its departure from Venezuela, it does not establish that the law judge's determination reflects any error with respect to the evidence in the record compiled by him. Respondent has not, in other words, identified any valid reason why the Board should disturb, much less overturn, a decision that rests largely on the law judge's credibility assessment as to testimony concerning the existence of a hydraulic leak during the ramp inspection.<sup>5</sup> A party's quarrel with such an assessment, based, essentially, on no more than the self-serving view that the law judge should have found certain testimony more believable

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<sup>5</sup>The law judge's credibility finding is consistent with other evidence in the record concerning the condition of the aircraft after it arrived in Miami where, before it was flown again by a different crew, and notwithstanding the respondent's failure to log the discrepancy pointed out to him by the inspectors in Venezuela, a leaking aileron hydraulic swivel was discovered and replaced.

than he did, is not enough.<sup>6</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied, and
2. The initial decision is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup>We have not considered the several documents attached to respondent's brief that were not introduced at the hearing. Our task on appeal in a case such as this one is to review the law judge's evaluation of formally submitted evidence relevant to the issues in litigation, not to examine whether the law judge's decision is sustainable in light of arguably relevant documentation that was obtainable before the hearing but not presented to him. Thus, while it might have been appropriate, at the hearing, to advance evidence bearing on, for example, the magnitude of a hydraulic leak that would render an aircraft unairworthy, but not inoperable, evidence of that character may not be introduced in the first instance at the appeal stage.